

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CORREY MITCHELL,) Case No. CV 23-3241-CAS (JPR)
Petitioner,)
v.) ORDER SUMMARILY DISMISSING
TRENT ALLEN, Warden,) PETITION FOR WRIT OF HABEAS
Respondent.) CORPUS

On April 27, 2023, Petitioner filed a Petition for Writ of Habeas Corpus, challenging his 2004 sentence in Los Angeles County Superior Court for carjacking and related crimes. (See Pet., ECF No. 1 at 2.) His various claims essentially boil down to this: his sentence was recalled by the superior court while his case was on appeal; notice of his modified judgment, which increased his sentence by 16 years, was never transmitted to either his appellate counsel or the court of appeal; and therefore his modified judgment has never been reviewed.¹ (See

¹ At times in the Petition and its supporting Memorandum of Points and Authorities, Petitioner frames his claims as challenging procedural errors the state courts allegedly made in considering his recalled-sentence claim when he raised it in those courts. (See, e.g., Pet., ECF No. 1 at 5-6.) But such state-law procedural claims are generally not cognizable on

1 Pet., Mem. P & A., ECF No. 1 at 9-15.)

2 This is not Petitioner's first federal habeas petition,
 3 however. On January 10, 2012, the Court denied on the merits his
 4 first such petition, in case number CV 08-2747-CAS (FFM). And on
 5 September 25, 2020, the Court summarily denied a second,
 6 successive petition challenging the same judgment and modified
 7 judgment, in which Petitioner raised the same claim he brings
 8 here, among others. See Mitchell v. Atchley, No. 20-8636-CAS
 9 (JPR) (C.D. Cal. filed Sept. 18, 2020); see id., Pet. & Mem. P. &
 10 A. (raising same claim he raises here), ECF Nos. 1 at 3 & 2 at 2-
 11 5. On January 14, 2022, the Ninth Circuit Court of Appeals
 12 denied Petitioner's request for a certificate of appealability in
 13 that case, finding that he had not shown that it was debatable
 14 that this Court was wrong in dismissing the 2020 petition as
 15 successive. Id., Order, ECF No. 9.

16 The Antiterrorism and Effective Death Penalty Act provides:

17 (b) (1) A claim presented in a second or successive habeas
 18 corpus application under section 2254 that was presented
 19 in a prior application shall be dismissed.

20 (2) A claim presented in a second or successive habeas
 21 corpus application under section 2254 that was not
 22 presented in a prior application shall be dismissed
 23 unless--

24 federal habeas review. See, e.g., Franzen v. Brinkman, 877 F.2d
 25 26, 26 (9th Cir. 1989) (per curiam) (holding that "a petition
 26 alleging errors in the state post-conviction review process is
 27 not addressable through habeas corpus proceedings" in federal
 28 court). In any event, as explained herein, to be able to raise
 any claims in this Court, Petitioner would first need permission
 from the Ninth Circuit Court of Appeals to proceed with a
 successive petition.

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B) (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3) (A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

28 U.S.C. § 2244 (b).

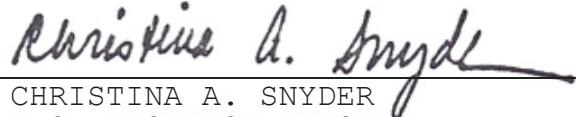
The Petition is successive within the meaning of § 2244(b) because it challenges the same judgment and modified judgment as Petitioner's first petition, which was denied on the merits. Indeed, it's also successive to Petitioner's second petition, which raised the same claim he brings here and as to which the Ninth Circuit denied a certificate of appealability on the issue of whether the petition was successive. Under § 2244(b), then, Petitioner was required to secure an order from the Ninth Circuit authorizing this Petition's filing before he filed it. See

1 Cooper v. Calderon, 274 F.3d 1270, 1274 (9th Cir. 2001) (per
2 curiam). A review of the Ninth Circuit's docket indicates that
3 he has not obtained such an order; indeed, he apparently has
4 never even requested one.

5 Because it is successive and unauthorized, the Petition is
6 SUMMARILY DISMISSED without prejudice to its refiling should
7 Petitioner obtain the necessary permission from the Ninth
8 Circuit. See R. 4, Rs. Governing § 2254 Petitions in U.S. Dist.
9 Cts. ("If it plainly appears . . . that the petitioner is not
10 entitled to relief . . . the judge must dismiss the petition
11").

12 IT IS SO ORDERED.

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14 DATED: May 15, 2023


CHRISTINA A. SNYDER
U.S. DISTRICT JUDGE

16 Presented by:



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JEAN ROSENBLUTH
18 U.S. Magistrate Judge

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